

**UNITED STATES DISTRICT COURT**

**DISTRICT OF MAINE**

**WORLD MINERALS CORPORATION )  
d/b/a INDUSTRIAL GARNET )  
EXTRACTIVES, )**

***Plaintiff***

**v.**

**INTERNATIONAL GARNET, et al., )**

***Defendants***

***Civil No. 89-0080 P***

***RECOMMENDED DECISION ON MOTION TO DISMISS***

The plaintiff has brought this diversity suit alleging several counts of commercial torts and trademark violations against the defendants, International Garnet, Charles M. Willis and Ralph G. Reed, Jr. The defendants International Garnet and Charles M. Willis have moved to dismiss for lack of personal jurisdiction.

When a party moves for dismissal under Fed. R. Civ. P. 12(b)(2), the burden is on the plaintiff to prove the facts necessary to sustain jurisdiction. *Dalmau Rodriguez v. Hughes Aircraft Co.*, 781 F.2d 9, 10 (1st Cir. 1986). To meet that burden, the plaintiff may not rely on the pleadings but must submit affidavits or other competent evidence on the jurisdictional issue. 5 C. Wright & A. Miller, *Federal Practice and Procedure* ' 1351 at p. 565 (1969). At the pretrial stage, the plaintiff need only make out a *prima facie* showing; any conflicts between the plaintiff's and the movant's affidavits must be resolved in favor of the plaintiff. *Triple-A Baseball Club Assoc. v. Northeastern Baseball, Inc.*, 655 F.

Supp. 513, 533-34 (D. Me. 1987), *rev'd on other grounds*, 832 F.2d 214, *cert. denied*, 108 S. Ct. 1111 (1988); *Marine Midland Bank, N.A. v. Miller*, 664 F.2d 899, 904 (2nd Cir. 1981).

The following facts are established by affidavits submitted by the defendants International Garnet and Willis. Willis is a resident of North Carolina. June 15, 1989 Affidavit of Charles Willis & 2. He does business as International Garnet Incorporated, which has its principal place of business in North Carolina. *Id.* Neither Willis nor International Garnet or any subsidiary or affiliate is authorized or registered to do business in Maine, *id.* & 3, 5; neither owns or leases real property or maintains any residence or place of business in Maine, *id.* & 4; neither employs anyone who performs or solicits business in Maine, *id.* & 7; and neither has a bank account in Maine or any contractual agreement with the plaintiff or any individual or business in Maine, *id.* & 8, 10. Over the course of three years the only business transacted in Maine by International Garnet involved sales of garnets to Bath Iron Works, a Maine business unrelated to the subject of this lawsuit, on three occasions during the first half of 1989 totalling \$12,000 out of total sales for the same period of \$200,000. *Id.* & 11-12.

The plaintiff has submitted an affidavit from its president, Ralph A. Dyer. However, many of the statements contained in this affidavit are not based on personal knowledge and therefore do not constitute competent evidence that can be considered in deciding this motion. The statements supporting the plaintiff's claim that International Garnet is a partnership of the individual defendants, Willis and Ralph G. Reed, Jr., are not based on personal knowledge; at most, the plaintiff's evidence indicates that Reed loaned funds to International Garnet. *See* Affidavit of Ralph A. Dyer & 3. In contrast, the defendants have submitted evidence that Reed is not a partner in International Garnet, but that Reed did guarantee a personal loan to Willis. July 1989 Affidavit of Charles Willis & 4; June 15, 1989 Affidavit of Charles Willis & 6.

In addition, the statements that Willis and International Garnet solicited sales on a regular basis in Maine are not based on personal knowledge. *See* Affidavit of Ralph A. Dyer & 4. The plaintiff has submitted invoices from an intermediary business, NYCO, showing shipments by NYCO to Bath Iron Works on two occasions and the United States Coast Guard in Maine on one occasion of product purchased by International Garnet from NYCO. Affidavit of Ralph A. Dyer & 4(c) & Exhibit E. Willis states, however, that International Garnet did not make any direct sales to the Coast Guard in Maine, but instead sold materials to another company, which in turn shipped them to Maine. July 1989 Affidavit of Charles Willis & 2.

Furthermore, the plaintiff's evidence refers to Willis' role in purchasing International Garnet from the plaintiff but provides no specific facts showing that this involved contacts with Maine. Affidavit of Ralph A. Dyer & 6 & Exhibit F. Finally, the statement that the defendants Willis and International Garnet had an employee working in Maine is not based on personal knowledge. Affidavit of Ralph A. Dyer & 8. However, the plaintiff has provided adequate evidence showing that the consequences of the alleged torts occurred in Maine. *Id.* & 7.

It is well settled that Maine's long-arm statute, 14 M.R.S.A. ' 704-A, permits the exercise of jurisdiction over nonresidents to the same extent allowed by the Fourteenth Amendment. *See Triple-A Baseball*, 655 F. Supp. at 534. Under the Fourteenth Amendment, the critical question is ``whether the defendant purposefully established 'minimum contacts' in the forum State." *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 474 (1985). ``The defendant's conduct and connection with the forum State [must be] such that he should reasonably anticipate being haled into court there." *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980).

If the suit arises out of or relates to the defendant's forum contacts, it is a case of *specific* jurisdiction which requires simply that the relationship among the defendant, the forum and the

litigation form a fair and reasonable foundation for the exercise of jurisdiction over the defendant. *See Helicopteros Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 414-16 (1984); *Hughes v. K-Ross Building Supply Center*, 624 F. Supp. 1136, 1137 (D. Me. 1986). Where the suit is unrelated to or does not arise out of the defendant's forum contacts, the stricter standard for *general* jurisdiction must be met, which requires "continuous and systematic" contacts with the forum state. *Helicopteros*, 466 U.S. at 414-16; *Hughes*, 624 F. Supp. at 1137.

This is a case of general jurisdiction. The fact that the effects of the defendants' allegedly tortious acts were felt in Maine by a Maine corporation does not in itself make the case one of specific jurisdiction. *See Jones v. North American Aerodynamics, Inc.*, 594 F. Supp. 657, 663 (D. Me. 1984), *aff'd*, 767 F.2d 905 (1st Cir. 1985) (plaintiff's residence in Maine not relevant to determining general jurisdiction). The only other contacts with Maine that have been established are that International Garnet sold materials to Bath Iron Works on three occasions. These sales to Bath Iron Works are unrelated to this lawsuit.

The plaintiff has failed to satisfy the general jurisdiction requirement of "continuous and systematic contacts" with the forum state. The Supreme Court found in *Helicopteros Nacionales*, 466 U.S. 408 (1984), that a nonresident corporation's contacts were insufficiently continuous and systematic to permit the assertion of general jurisdiction in a tort action, even when the corporation had travelled to the forum to negotiate a contract, had purchased helicopters from forum sellers at regular intervals, and had sent personnel to the forum for training. The First Circuit Court of Appeals has held that the general jurisdiction minimum contacts requirement was not met in a personal injury suit by a Maine resident where the defendant's contacts consisted of limited advertising in trade journals circulating in the state and eight sales representatives distributing information in the state.

*Glater v. Eli Lilly & Co.*, 744 F.2d 213 (1st Cir. 1984). Similarly, in a personal injury case where the defendant sold \$2,400 worth of goods over a 10-year period in Maine, out of total sales of \$1.5 to 1.7 million, and national advertising was not targeted toward any specific state, this court found that the defendant's contacts were insufficient to establish general jurisdiction. *Jones v. North American Aerodynamics, Inc.*, 594 F. Supp. 657 (D. Me. 1984), *aff'd*, 767 F.2d 905 (1st Cir. 1985). In contrast, the shipment of \$6 million worth of goods into Maine during a 6-year period, a sales customer list of 20 Maine businesses, and sales representatives' contact every 6 months constituted continuous and systematic contacts sufficient to support general jurisdiction. *Hughes v. K-Ross Building Supply Center, Inc.*, 624 F. Supp. 1136 (D. Me. 1986). In this case, making three sales to a Maine business unrelated to this action and causing damages to a Maine corporation is clearly not sufficient to demonstrate "continuous and systematic" contacts with Maine.<sup>1</sup>

Accordingly, I recommend that the defendants' motion to dismiss for lack of personal jurisdiction be **GRANTED**.

#### **NOTICE**

***A party may file objections to those specified portions of a magistrate's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days after being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.***

***Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.***

***Dated at Portland, Maine this 5th day of September, 1989.***

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<sup>1</sup> The result would not be otherwise even if, in addition, International Garnet made a single direct sale to the Coast Guard in Maine.

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*David M. Cohen*  
*United States Magistrate*